

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:	)	
	)	
C. S.,	)	OAH Case No. 2001110422
	)	
Claimant,	)	
	)	
and	)	
	)	
INLAND REGIONAL CENTER,	)	
	)	
Service Agency.	)	
_____	)	

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 7, 2002, in Hemet, California.

Aleyda Toruno, Clients' Rights Advocate, Office of Clients' Rights Advocacy, represented Claimant.

Deborah K. Crudup, Program Manager, represented Service Agency.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of closing briefs. Initial briefs, marked for identification as Claimant's Exhibit 27 and Service Agency's Exhibit 18, were received on February 15, 2002. Reply briefs, marked for identification as Claimant's Exhibit 28 and Service Agency's Exhibit 19 were received on February 22, 2002

On February 25, 2002, Service Agency objected to consideration of declaration, signed by Daniel Juarez, Associate Managing Attorney of the Los Angeles Office of Protection and Advocacy, Inc. (PAI), contained in Claimant's reply brief. The written objection is marked for identification as Service Agency Exhibit 19. The objection is overruled. The document pertains to a matter, PAI's obligation to represent individuals in marriage dissolution matters, which was the subject of testimony at the hearing and argument after the hearing.

The matter was submitted for decision on February 25, 2002.

## ISSUE

Whether Service Agency should fund the services of a family law attorney to assist Claimant in marriage dissolution proceedings.

## FACTUAL FINDINGS

1. Claimant is a Service Agency consumer who was born on October 12, 1961. She is eligible for Service Agency services on the basis of Cerebral Palsy.

2. Claimant is married. She resided with her husband, Johnson, and their eight-year-old son, Josiah, until November 2001. She continues to live in a mobile home purchased with the proceeds of a lawsuit in which Claimant was the plaintiff. Claimant provides home schooling for Josiah.

3. Claimant is able to feed herself and to handle her finances. She needs assistance to perform her daily living functions and uses an electric wheelchair for mobility. She receives In Home Supportive Services (IHSS). Her husband was her primary caregiver until his departure. Claimant is not employed and receives Social Security payments and other public funds.

4. She became a Service Agency consumer in October 2000. Service Agency provides supported living services. It has been able to negotiate with one of its vendors, Pathway, Inc., to provide coordinated IHSS and Service Agency support services at the rate of 15 hours per day. The assistant physically helps Claimant complete forms required by government agencies and other entities.

5. Claimant's husband emotionally abused her toward the end of their marriage, restricting her mobility and independence. He also neglected his IHSS-funded care duties. On November 3, 2001, he drove Claimant to a retail bookstore and did not return to pick her up. He left town with their son without leaving word of his location.

6. With the assistance of her mother, Claimant obtained an emergency custody order on November 6, 2001, while her son was missing. Claimant was concerned that her husband had taken her son to his native Philippines.

7. Johnson S. returned to Hemet on November 8, 2001, with Josiah S. and filed for marriage dissolution.

8. On November 9, 2001, Claimant sought amendment of her Individual Program Plan (IPP). She requested additional supported living services, family counseling, and funding for a family law attorney.

9. After a meeting of representatives of the parties on November 12, 2001, Service Agency modified the existing IPP. The long-term goal was partially modified to include living independently with her son. The desired outcomes included in the addendum to the IPP were living in a safe, affordable, and accommodating home with her son, and obtaining a satisfactory resolution in divorce proceedings. With respect to the second desired outcome, Service Agency agreed to find generic resources for legal and family counseling services.

10. Service Agency provided Claimant and her mother with phone numbers of legal service agencies and other generic resources to seek assistance with the dissolution proceedings. Claimant's mother called these agencies, as well as others obtained through other sources. The agencies could not represent Claimant; those that were able to help could only assist in preparing documents.

11. Service Agency asked one of its vendored attorneys to meet with Claimant on an expedited basis. The attorney, Steve Hermanson, met with Claimant on November 12, 2001. On November 13, 2001, he wrote Claimant: "After carefully evaluating the magnitude and scope of the services required to bring a favorable resolution, I have determined that I will be unable to devote adequate time to properly serve you."

12. Service Agency also made an appointment for Claimant to see an attorney with Hemet Family Law Services on December 6, 2001.

13. On November 16, 2001, Service Agency informed Claimant that it was denying her request for funding of a private family law attorney. Claimant thereafter filed a timely fair hearing request.<sup>1</sup>

14. On November 16, 2001, Johnson S.'s attorney served Claimant with notice of a deposition to be taken on November 26, 2001.

15. Concerned about the impending deposition and the inability of generic agencies to represent her, Claimant hired a private attorney. The attorney reduced her fee and Claimant's mother paid the \$1,550 retainer. Claimant would like to reimburse her mother and would like regional center funding in the event attorney costs rise.

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<sup>1</sup> Claimant has executed a waiver of the time requirements contained in Welfare and Institutions Code sections 4712 and 4712.5.

16. The divorce proceedings are contested and present complex legal issues. An attorney represents Claimant's estranged husband and he is aggressively pursuing sole custody of the couple's child. The attorney has raised Claimant's disability as a ground to award custody to the father. There are also issues involving division of property.

17. Legal service programs, such as Hemet Family Law and others suggested by Service Agency, assist clients with document preparation and with presenting themselves in court, but do not make court appearances on their behalf. Such programs are not likely to meet Claimant's greater legal representation needs.

### LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code<sup>2</sup> section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. Section 4501. The Legislature declared in section 4501:

“An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community....

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age....”

2. Section 4502 provides that “[p]ersons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.” The section sets forth the Legislature's intent that persons with developmental disabilities have certain enumerated rights, including, as pertinent to this matter:

“(j) A right to make choices in their own lives, including, but not limited to, where and with whom to live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.”

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<sup>2</sup> All further references are to the Welfare and Institutions Code.

3. Section 4512(b) defines “services and supports for persons with developmental disabilities” as follows:

“... specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option....”

4. In order to protect the rights of persons with developmental disabilities and to ensure delivery of needed services and supports, the Lanterman Act created regional centers, such as Service Agency, and gave them a critical role in the coordination and delivery of services and supports for persons with disabilities. Section 4620 et seq. Thus, regional centers are responsible for developing and implementing individual program plans, taking into account consumer needs and preferences, and service cost-effectiveness. Sections 4646, 4646.5, 4647, and 4648. One of the responsibilities of regional centers is advocacy on behalf of consumers. Section 4648 provides:

“In order to achieve the stated objectives of a consumer’s individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

...

(b) (1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division....

5. The foregoing provisions and the principles they embody must be relied upon in order to resolve the instant dispute. The Lanterman Act broadly declares the State’s responsibility for providing the necessary supports, including advocacy, to enable persons with developmental disabilities to enter the mainstream of society and to enjoy the same rights and responsibilities of persons without disabilities.

As required by section 4512(b), however, the services and supports available under the Lanterman Act must be directed toward the alleviation of a developmental disability, toward the habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives of individuals with developmental disabilities.

The services of a family law attorney, in the existing circumstances, are not directed toward the “alleviation of a developmental disability” or toward Claimant’s “social, personal, physical, or economic habilitation or rehabilitation.” Nor are they directed toward greater independence or integration otherwise impacted by her developmental disability.

Claimant will undoubtedly benefit from the services of an attorney. However, the benefits are those that will inure to any individual regardless of disability. The attorney’s services do not enhance independence or promote integration into society which had been denied or made more difficult to attain because of the developmental disability. Thus, unlike advocacy to obtain access to regional center or special education services, the need for adequate legal representation in marriage dissolution proceedings is not unique to individuals with developmental disabilities.

Claimant does face challenges that individuals without disabilities do not face in seeking redress from the judicial system. Thus, she needs assistance in completing judicial forms. Service Agency does not dispute the need for supports in this area in order to place her at the same level as others without disabilities; in fact, it is funding, together with IHSS, the services of the assistant who has been helping Claimant complete various documents. She also needs assistance in travelling from her home to the courthouse; Service Agency and the local transportation agency support Claimant in this respect. Once in court Claimant is able to articulate her concerns and has the opportunity to present her case just like any other family court litigant.

Claimant also argues that her husband has used her disability to argue against her receipt of custody over Josiah. However, this argument can be made whether Claimant has an attorney or not and representation by an attorney will not make the argument disappear.

In sum, the services of the family law attorney are not directed toward the alleviation, habilitation, or rehabilitation of a developmental disability, or toward independence or integration otherwise hindered by the disability.

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ORDER

1. Claimant's appeal is denied.
2. Service Agency need not fund the services of a family law attorney to assist Claimant in marriage dissolution proceedings.

Dated:\_\_\_\_\_

Samuel D. Reyes  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.